IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 420 of 2004

WITH

CIVIL APPLICATION NO.10082 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YUNUS MOHAMADMIYA SAIYED - Appellant(s)

Versus

D J PACKAGING & 2 - Defendant(s)

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Appearance :

MR BHARAT T RAO for Appellant(s) : 1,
MR SP MAJMUDAR for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 05/09/2005

ORAL JUDGMENT

Present Appeal from Order is preferred to challenge the order passed below Exh.5 in Special Civil Suit No.558 of 2004 by 6th Joint Civil Judge (Senior Division), Vadodara

on 8th December, 2004.

2.The appellant was the plaintiff before the trial Court who filed the said suit with prayers which can be translated thus.

1.A decree of dissolution of suit firm M/s.D.J. Packaging be passed.

2.A preliminary decree against the defendants for taking Accounts of the firm from 26th of February, 2003 be passed.

3.Direct the defendants to pay the money due, part of the profit and goodwill.

4.Declaration that defendants have no right to alienate by sale, mortgage or any other mode the suit property of firm M/s.D.J. Packaging described in paragraph 1 of the plaint till conclusion of the dissolution process.

5.Permanently injunct the defendant from transferring the properties of M/s. D.J. Packaging in any manner till conclusion of the dissolution process.

6. Injunct the defendant from preventing the plaintiff/ appellant from entering the premises and property of the firm indicated in Para 1 of the plaint.

7. Appoint receiver for management of firm, recovery of dues from debtors of firm and taking possession of firm property and books of account.

8. Direct defendants to pay costs of the suit.

9. Grant any other relief under law.

3. The plaintiff also tendered application at Exh.5 for injunction. The Court below, after considering rival side contentions, rejected the application for injunction by observing that the plaintiff has no prima-facie case and hence, this Appeal.

4. Learned Advocate Mr.B.T.Rao has taken this Court through the partnership-deed, dissolution-deed and order of the Court below. He submitted that Court below has committed an error in rejecting the

injunction application. He submitted that defendants / respondents have already disposed of immovable properties and, if injunction is not granted, they may dispose of the landed properties as well. He also submitted that the respondents are enjoying the status of Non-Resident- Indian and have gone abroad, and the appellant may have difficulty in enjoying the fruits of the decree that may be passed in his favour. Therefore, in order to protect the interest of the appellant / plaintiff also, injunction ought to have been granted by the Court below. This Court may therefore, grant injunction by admitting this appeal granting injunction.

5. Learned Advocate Mr.Majmudar has opposed this appeal. He has drawn attention to the paragraph – 7 of the Partnership-deed which specifically provides that the appellant has 25 % share only in the goodwill that may accrue in future and that he has no right whatsoever in any of the properties of the firm. The properties in question are indicated to be standing in name of defendant No.2 or defendant No.3 in their personal capacity as can be seen from the order of the Court below, and therefore, the plaintiff / appellant has no

prima-facie case.

6. In rejoinder Mr.Rao has drawn attention to Clause – 4 (a) of the partnership agreement whereby, he tried to impress the Court that the appellant has 25% share in the firm.

7. This Court has taken into consideration the rival side contentions.

7.1 It is appearantly clear from Para No.7 of the partnership-deed that the parties had specifically agreed that the plaintiff / appellant will have 25% of value of the goodwill and that his right / claim would be restricted only to goodwill, and that he will have no right whatsoever over in any of the properties of the firm.

7.2 It is also clear from Para No.5 of the said agreement that the plaintiff / appellant was to work on a fixed monthly remuneration of Rs.6,000/- and was to manage the affairs of the firm. It also transpires that to facilitate the management of the affairs of the firm, a power of attorney was executed in his favour. Said power of attorney has now been revoked due to some

disputes. Be that as it may, fact remains that prima-facie he was being paid a monthly remuneration and his share was restricted to 25% of the value of the goodwill only and no right under the agreement ever accrued to him over the properties of the firm. The Court below was therefore, justified in observing that plaintiff has not been able to make out a prima-facie case in his favour for the reliefs sought.

8. It is also worth a note that defendants / respondents have produced documents to show that the properties were sold in favour of the defendant by a registered sale-deed. The Court below was also justified in observing that goodwill cannot be treated at par with all the properties of the firm.

9. In opinion of this Court therefore, no injunction is required to be granted by entertaining this Appeal. Having found that the plaintiff / appellant has no prima-facie case, rest of the tests for grant of injunction, are not gone into. The appeal is found to be devoid of merits. It must fail and is dismissed. No costs. Notice is discharged.

10.Civil Application No.10082 of 2004 disposed of without orders as appeal is dismissed.

11.It would be open for parties to move the trial Court for expedite disposal of the suit and the same would be decided by the trial Court, giving due weightage to pendency of similar old suits.

(A.L.DAVE, J.)

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